

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In Re:)	
)	
Willie B. Swanson	)	Case Number: 11-42420-399
Margaret M. Swanson)	
)	
Debtors	)	Chapter 13
)	
CitiMortgage, Inc., or it successors and assigns	)	Motion to Lift Stay filed by CitiMortgage, Inc.
)	
Movant,)	
	)	Millsap & Singer, LLC
vs.	)	612 Spirit Drive
	)	St. Louis, MO 63005
Willie B. Swanson	)	(636) 537-0110
Margaret M. Swanson)	
	)	Hearing Date: January 15, 2014
and	)	Hearing Time: 10:00 A.M.
	)	Objection Deadline: January 8, 2014
John V. LaBarge, Jr.)	
)	
Trustee)	
)	
Respondents)	
)	

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM AUTOMATIC STAY, OR
IN THE ALTERNATIVE, TO DISMISS**

WARNING: ANY RESPONSE OR OBJECTION MUST BE FILED WITH THE COURT BY JANUARY 8, 2014 (SEE L.B.R. 9013-1). A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

THE HEARING TO BE HELD ON THE DATE AND TIME ABOVE BEFORE THE HONORABLE BARRY S. SCHERMER, IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, THOMAS F. EAGLETON U.S.

**COURTHOUSE, 111 SOUTH TENTH STREET, FLOOR 5, NORTH COURTROOM,
ST. LOUIS, MO 63102.**

COMES NOW, CitiMortgage, Inc. and for its Motion for Relief from Automatic Stay, or, in the Alternative, to Dismiss and respectfully states to the Court as follows:

1. On March 16, 2011, Debtors filed a Petition under Chapter 13 of the Bankruptcy Code. John V. LaBarge, Jr. is the duly appointed and qualified Trustee in this case.

2. CitiMortgage, Inc. is the holder of a secured claim in this proceeding by virtue of one Promissory Note dated February 13, 2004 in the original principal amount of \$113,600.00. A copy of said Note has been electronically attached to this document as Exhibit A and is made a part hereof by this reference.

3. Said Note is secured by a Deed of Trust dated February 13, 2004 and recorded in Book 15657, Page 1525 constituting a first lien on real estate owned by the Debtors. Said property being commonly known as 11562 Sherrington Dr., Saint Louis, MO 63138; more particularly described as follows:

LOT 224 OF NORTHGATE ESTATES NO. 6, A SUBDIVISION IN ST. LOUIS COUNTY, MISSOURI, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 95 PAGE 45 OF THE ST. LOUIS COUNTY RECORDS.

A copy of said Deed of Trust, which is recorded in the St. Louis County Recorder of Deeds Office, has been electronically attached to this document as Exhibit B and is made a part hereof by this reference.

4. Copies of the appropriately registered documents to support the relationship between ABN-AMRO Mortgage Group, Inc. and CitiMortgage, Inc. have been electronically attached to this document as Exhibit C and are made a part hereof by this reference.

5. Movant seeks to enforce said Note and Deed of Trust as by law allowed. No creditor or Trustee of the estate has any interest in said realty superior to the rights of Movant.

6. This Court previously entered its Order pursuant to 11 U.S.C. Section 362(a) prohibiting, among other things, any act to enforce any lien against the property of the estate and any act to obtain possession of property of the estate.

7. CitiMortgage, Inc. services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor(s) obtain(s) a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of the Movant. Movant, directly or through an agent, has possession of the promissory note. The promissory note is either made payable to Note-holder or has been duly endorsed. Noteholder is the original mortgagee or beneficiary or the assignee of the security instrument for the referenced loan.

8. As of November 5, 2013, the current unpaid principal balance of the Note is \$96,113.65.

9. The Chapter 13 Plan filed by the Debtors calls for treatment of the secured claim with payments being made by the Debtors. Monthly post petition payments are owing and delinquent from August 1, 2013. The following are the payments that are delinquent as of November 5, 2013:

4 payments @\$1,108.22	\$4,432.88
MFR Attorney Fees	\$600.00
MFR Attorney Costs	\$176.00
Suspense	(\$1,049.75)
Total Arrearages	\$4,159.13

The next payment under the terms of the Note will come due on December 1, 2013 and is in the amount of \$1,108.22. A post-petition payment history has been electronically attached to this document as Exhibit D and is made a part hereof by this reference.

10. The aforesaid realty has depreciated in value while in possession of the Debtors. There is no equity in said property for the benefit of the Debtors. Such property is not necessary for an effective reorganization.

11. Good and sufficient cause exists in this case to modify the automatic stay of Section 362 for the reason that:

- (a) Post-petition payments to CitiMortgage, Inc. have not been paid by the Debtors.
- (b) CitiMortgage, Inc. does not have adequate protection for its interest in said real estate.
- (c) If CitiMortgage, Inc. is not permitted to foreclose its security interest in said real estate, it will suffer irreparable injury, loss and damage.
- (d) The Chapter 13 plan with respect to CitiMortgage, Inc. was not proposed in good faith as required by 11 U.S.C. Section 1325(a)(3) notwithstanding confirmation by the Court.

12. Movant specifically requests permission from this Honorable Court to communicate with Debtors and Counsel for Debtors to the extent provided for under applicable nonbankruptcy law.

WHEREFORE, Movant prays that this Court terminate the automatic stay in regard to the realty in order to permit Movant, or its successors and assigns to proceed with foreclosure on the aforesaid property, to pursue its remedies under state law in connection with the aforesaid Deed of Trust and Note, and to pursue its remedies under state law for possession of said property after foreclosure and for an order that the relief from the automatic stay is not stayed pursuant to Rule 4001 for fourteen (14) days. In the alternative, Movant prays that this Court dismiss this case for failure to abide by the

terms and conditions of the Chapter 13 plan and for such other relief as is appropriate and just.

Dated November 27, 2013

Respectfully Submitted,
Millsap & Singer, LLC

/s/ William T. Holmes, II

Cynthia M. Woolverton, #47698, #47698MO

Michael J. Wambolt, #51231, #51231MO

William T. Holmes, II, #59759, #59759MO

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St. Louis, MO 63005

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Attorneys for CitiMortgage, Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on November 27, 2013, with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court pursuant to CM/ECF as set out on the Notice of Electronic filing as issued by the Court or in the alternative has been served by depositing a true and correct copy of same enclosed in a postage prepaid, properly addressed envelope, in a post office official depository under the exclusive care and custody of the United States Postal Service within the state of Missouri on those parties directed by the Court on the Notice of Electronic Filing issued by the Court as required by the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court.

/s/ William T. Holmes, II

Electronic Mail Notice List

The following is the list of attorneys who are currently on the list to receive e-mail notices for this case.

Jason Fauss

John V. LaBarge, Jr.

Office of the United States Trustee

Manual Notice List

The following is a list of parties who are not on the list to receive e-mail notices for this case (who therefore require manual noticing).

Willie B. Swanson
Margaret M. Swanson
11562 Sherrington
St. Louis, MO 63138